



EXECUTIVE SUMMARY

DISPELLING THE MYTHS: THE USA PATRIOT ACT

UNITING AND STRENGTHENING AMERICA BY
PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM

In response to the terrorist attacks of September 11, 2001, Congress passed, and the President signed into law, the USA PATRIOT Act. On December 31, 2005, sixteen law enforcement and intelligence provisions of the Act are scheduled to expire. Congress is currently reviewing these temporary provisions, as well as other permanent provisions of the Act. This paper dispels the myths behind several temporary and permanent provisions of the Act.

Section 213 – Delayed-notice Search Warrants

- ***Myth:*** Delayed-notice search warrants did not exist prior to the USA PATRIOT Act.
- ***Reality:*** Delay-notice search warrants have been used by law enforcement and upheld as constitutional for years.
- ***Myth:*** Section 213 authorizes law enforcement to covertly conduct a search or seize evidence without a finding of probable cause by a judge.
- ***Reality:*** Delayed-notice does not usurp 4th Amendment protections against unreasonable searches and seizures.

Section 215 – Access to Records and Other Items under FISA

- ***Myth:*** Section 215 allows the federal government to monitor the library and bookstore activities of ordinary, law-abiding citizens.
- ***Reality:*** Law enforcement may not use section 215 to obtain the records of just anyone. They must first demonstrate to the court that the business records are sought in connection with international terrorism or clandestine intelligence activities.

Section 218 – Foreign Intelligence Information (“The Wall”)

- ***Myth:*** As enacted in 1978, FISA required a “wall” of separation between law enforcement and intelligence investigations.
- ***Reality:*** FISA’s previous “the purpose” standard did not require a wall of separation between law enforcement and intelligence investigations.

Section 505 – Intelligence Subpoena Requirements

- ***Myth:*** Section 505 authorizes the FBI to obtain top secret personal information to be used in a criminal prosecution but provides no recourse for challenging such an order in court.
- ***Reality:*** NSLs, like administrative subpoenas, are merely requests for information.

Material Witness Warrants

- ***Myth:*** The PATRIOT Act granted federal law enforcement unprecedented authority to arrest and detain material witnesses.
- ***Reality:*** The PATRIOT Act did not create or expand the use of material witness warrants.